



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Richard W. Teixeira - Waiver - Health Insurance
Premiums

File: B-229187

Date: July 12, 1988

DIGEST

An employee was overpaid when the correct amount was not deducted from his salary for health insurance premiums. Upon the employee's transfer to a new agency, the premiums for a less expensive health plan were deducted from his salary. The employee seeks waiver of his debt to the government under 5 U.S.C. § 5584 (1982). Waiver may be granted where the amount of the overpayment was small each pay period, the employee's salary fluctuated at the time of the error, and employee continued to be covered by and file claims under the same health insurance plan.

DECISION

This decision is in response to an appeal by Richard W. Teixeira, an employee of the Bureau of Land Management, Department of the Interior, concerning the denial by our Claims Group of waiver of an overpayment of salary (Z-2877285, June 25, 1987). The overpayment was caused by the agency's failure to deduct the correct amount from Mr. Teixeira's salary for the health insurance. For the reasons that follow, we conclude that Mr. Teixeira's appeal may be granted and his indebtedness waived.

BACKGROUND

Mr. Teixeira enrolled in the Blue Cross/Blue Shield Health Plan on May 7, 1979, while employed by the United States Forest Service, and the correct deductions for his health insurance were made by the agency. However, when Mr. Teixeira transferred to the Bureau of Land Management on March 9, 1980, his enrollment was erroneously changed to Alliance, a less expensive health plan. Mr. Teixeira was overpaid a total of \$691.08 between March 22, 1980, and January 7, 1984, when the error was discovered upon his change to a different health plan. The difference between the amounts deducted for health insurance when the error first occurred was \$4.94.

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Mr. Teixeira points out that at the time of the transfer, his salary fluctuated because his cost of living allowance (COLA) was eliminated from his salary and his state tax deductions changed. He states that the format of his leave and earnings statement also changed.

Mr. Teixeira also states that immediately after arriving in California, he was sent to Arizona for 2 weeks for official training for his new position. Because his new position had been vacant before his arrival, he was also responsible for the backlog of work that had accumulated. Additionally, Mr. Teixeira experienced the normal responsibilities associated with relocation, including finding a new home. Thus, he concludes that he could not be expected to notice an error in withholding for health insurance premiums. Finally, Mr. Teixeira points out that he did not receive membership information or a membership card from the Alliance health plan and that he continued to file claims with the Blue Cross plan until 1984.

DISCUSSION

Under the provisions of 5 U.S.C. § 5584 (1982), the Comptroller General may waive claims for overpayment when collection of the claim would be against equity and good conscience and not in the best interests of the United States. Waiver cannot be granted if the actions of the employee indicate fraud, misrepresentation, fault, or lack of good faith. 4 C.F.R. § 91.5(c) (1987).

Because in Mr. Teixeira's case misconduct is not indicated, the key issue is whether Mr. Teixeira was partially at fault for the error. The test is whether, in light of all the circumstances, a reasonable person in the employee's position knew or should have known that an error had been made and failed to take corrective action. Frederick D. Crawford, 62 Comp. Gen. 608 (1983). An employee has a duty to review leave and earnings statements for accuracy and may be found at fault for an error he failed to notice or to report even when the agency made the primary error in calculations. See L. Mitchell Dick, B-192283, Nov. 15, 1978.

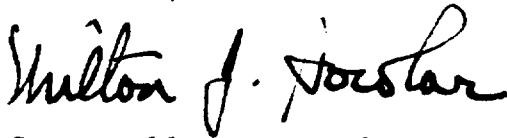
However, in Hollis W. Bowers, 65 Comp. Gen. 216 (1986), we held that if a deduction appears reasonable on its face, the employee is not expected or required to audit the amount shown. Thus, in Bowers an error that resulted in overpaying an employee \$200 a pay period because of underdeductions for life insurance premiums was waived, even though the employee did have access to materials that would have made the error apparent to him. We noted that the deductions for

the employee's elected life insurance plan were extremely high because of his age, but we held that the employee had no reason to expect that the statement was erroneous considering that the employee had been covered by a similar plan 13 years earlier. Bowers, supra.

In deciding whether a deduction shown on a leave and earnings statement appears reasonable on its face, we have taken into account the actual amount overpaid per pay period. If the amount underdeducted per pay period is insignificant, we are more likely to find that the deduction appeared reasonable on its face. Therefore, in Phillip C. McGuire, B-226147, June 2, 1987, we granted waiver to an employee who was overpaid when an agency deducted 7 percent for retirement instead of 7.5 percent. Because there was only a minor discrepancy amounting to \$10.53 for retirement deductions, and because the error occurred at the same time his gross pay decreased, we found that the employee could not be expected to audit the amount shown.

In the present case, we note that not only was the amount of overpayment per paycheck minimal, but the leave and earnings statement itself changed when Mr. Teixeira transferred to a new agency, and his salary changed due to changes in his state taxes and his cost of living allowance. These changes resulted in a different net salary, thus making it less obvious that an error had been made than if Mr. Teixeira's paycheck had remained constant.

Therefore, under the circumstances we conclude that Mr. Teixeira was not at fault in accepting these overpayments, and we grant waiver of the overpayments which totaled \$691.08.


for Comptroller General
of the United States